

IC 14-21

ARTICLE 21. HISTORIC PRESERVATION AND ARCHEOLOGY

IC 14-21-1

Chapter 1. Division of Historic Preservation and Archeology

IC 14-21-1-1

Applicability of chapter

Sec. 1. This chapter does not apply to the human remains of individuals who die after December 31, 1939.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-2

"Artifact" defined

Sec. 2. As used in this chapter, "artifact" means an object made or shaped by human workmanship before December 11, 1816.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-3

"Burial ground" defined

Sec. 3. As used in this chapter, "burial ground" means ground in which human remains are buried. The term includes the land associated with or incidental to the burial of human remains.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-4

"Burial object" defined

Sec. 4. As used in this chapter, "burial object" means any item intentionally placed in a burial ground at or near the time of burial.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-5

"Council" defined

Sec. 5. As used in this chapter, "council" refers to the advisory council for the bureau of lands and cultural resources established by IC 14-9-6-1.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-6

"Division" defined

Sec. 6. As used in this chapter, "division" refers to the division of historic preservation and archeology.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-7

"Human remains" defined

Sec. 7. As used in this chapter, "human remains" means any part of the body of a human being in any:

(1) stage of decomposition; or

(2) state of preservation.
As added by P.L.1-1995, SEC.14.

IC 14-21-1-8

"Plan", "archeological plan", and "development plan" defined

Sec. 8. (a) As used in this chapter, "plan" refers to:

- (1) an archeological plan, as described in subsection (b); or
- (2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages.

(c) As used in this chapter, "development plan" means a plan for the erection, alteration, or repair of any structure.

As added by P.L.1-1995, SEC.14. Amended by P.L.46-2000, SEC.7.

IC 14-21-1-9

"Register" defined

Sec. 9. As used in this chapter, "register" refers to the register of Indiana historic sites and historic structures established under this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-10

"Review board" defined

Sec. 10. As used in this chapter, "review board" refers to the historic preservation review board established by this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-10.4

"State college or university project" defined

Sec. 10.4. As used in this chapter, "state college or university project" means a project of a state college or university that involves the construction, renovation, or demolition of one (1) or more buildings.

As added by P.L.135-1996, SEC.2.

IC 14-21-1-11

Administration and development of programs and policies

Sec. 11. The division of historic preservation and archeology shall administer and develop the programs and policies established by this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-12

Duties of division

Sec. 12. The division shall do the following:

- (1) Develop a program of historical, architectural, and archeological research and development, including continuing surveys, excavations, scientific recording, interpretation, and

publication of the state's historical, architectural, and archeological resources.

(2) Prepare a preservation plan for the state that establishes planning guidelines to encourage the continuous maintenance and integrity of historic sites and historic structures. However, the plan is not effective until the plan has been:

(A) presented to the council for review and comment; and

(B) approved by the review board after public hearing.

(3) Undertake the action necessary to qualify the state for participation in sources of federal aid to further the purposes stated in subdivisions (1) and (2).

(4) Provide information on historic sites and structures within Indiana to federal, state, and local governmental agencies, private individuals, and organizations.

(5) Advise and coordinate the activities of local historical associations, historic district commissions, historic commissions, and other interested groups or persons.

(6) Provide technical and financial assistance to local historical associations, historic district commissions, historic commissions, and other interested groups or persons.

(7) Review environmental impact statements as required by federal and state law for actions significantly affecting historic properties.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-13

Powers of division

Sec. 13. The division may do the following:

(1) Recommend the purchase, lease, or gift of historic property of archeological importance and make recommendations to the director, council, and commission regarding policies affecting the operation and administration of these sites and structures by the section of historic sites of the division of state museums and historic sites.

(2) Prepare and review planning and research studies relating to archeology.

(3) Conduct a program of education in archeology, either within the division or in conjunction with an institution of higher education.

(4) Inspect and supervise an archeological field investigation authorized by this chapter.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-13.5

Survey and registry of Indiana burial grounds

Sec. 13.5. (a) The division may conduct a program to survey and register in a registry of Indiana cemeteries and burial grounds that the division establishes and maintains all cemeteries and burial grounds in each county in Indiana. The division may conduct the program alone or by entering into an agreement with one (1) or more of the

following entities:

- (1) The Indiana Historical Society established under IC 23-6-3.
- (2) A historical society (as defined in IC 36-10-13-3).
- (3) The Historic Landmarks Foundation of Indiana.
- (4) A professional archeologist or historian associated with a college or university.
- (5) A township trustee.
- (6) Any other entity that the division selects.

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director considers appropriate. The director shall use a gift or grant received under this subsection:

- (1) to carry out subsection (a); and
- (2) according to the terms of the gift or grant.

(c) At the request of the director, the auditor of state shall establish a trust fund for purposes of holding money received under subsection (b).

(d) The director shall administer a trust fund established by subsection (c). The expenses of administering the trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the trust fund established by subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the trust fund at the end of a state fiscal year does not revert to the state general fund.

(g) Nothing in this section may be construed to authorize violation of the confidentiality of information requirements of 16 U.S.C. 470(w) and 16 U.S.C. 470(h)(h).

(h) The division may record in each county recorder's office the location of each cemetery and burial ground located in that county.
As added by P.L. 46-2000, SEC.8. Amended by P.L. 177-2001, SEC.2; P.L. 1-2005, SEC.143.

IC 14-21-1-14

Duties upon proposed transfers of property by the state

Sec. 14. (a) This section does not apply to real property that is owned by a state educational institution (as defined in IC 20-12-0.5-1).

(b) The Indiana department of administration shall notify the division of a proposed transfer of real property owned by the state at the earliest planning stage and no later than ninety (90) days before the date of the proposed transfer.

(c) The division shall inspect the property and notify the Indiana department of administration of the location of each historic site or historic structure on the property.

(d) Real property owned by the state may not be sold or transferred until the division has stated in writing that the property does not, to the best of the division's knowledge, contain a historic

site or historic structure.

(e) If the Indiana department of administration receives notice of a historic site or historic structure on the property, the Indiana department of administration shall reserve control of the appropriate historic property by means of a covenant or an easement contained in the transferring instrument.

(f) The division of state museums and historic sites shall administer property reserved under subsection (e).

As added by P.L.1-1995, SEC.14. Amended by P.L.135-1996, SEC.3.

IC 14-21-1-15

Duties regarding registers and federal preservation grants

Sec. 15. The division shall do the following:

- (1) Undertake a statewide survey to identify and document historic sites and historic structures.
- (2) Prepare and maintain a register of Indiana historic sites and historic structures and establish criteria for the listing of historic sites and historic structures on the register.
- (3) Maintain the Indiana part of the National Register of Historic Places under 16 U.S.C. 470 et seq.
- (4) Administer the federal preservation grants program under 16 U.S.C. 470 et seq.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-16

Field investigations or alteration of historic property without permit

Sec. 16. Except as provided in section 18 and sections 25 through 27 of this chapter, a person who knowingly, without a permit, conducts a field investigation or alters historic property within the boundaries of property owned or leased by the state commits a Class A misdemeanor.

As added by P.L.1-1995, SEC.14. Amended by P.L.54-1997, SEC.7.

IC 14-21-1-17

Additions to or removals from register

Sec. 17. (a) Any person may nominate a site or structure for addition to or removal from the register. Upon approval of the nomination by the division, all affected persons shall be notified.

(b) If an objection to the action is not filed with the division within thirty (30) days after the notification date, the nomination is automatically approved.

(c) If an objection is received within thirty (30) days, a designated member of the review board shall hold a hearing and make a determination. The review board shall make the final decision regarding a nomination, subject to administrative review by the commission under IC 4-21.5.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-18

Alteration of historic sites or structures; certificate of approval; exceptions; survey of historic sites and structures; reports

Sec. 18. (a) A:

- (1) historic site or historic structure owned by the state; or
- (2) historic site or historic structure listed on the state or national register;

may not be altered, demolished, or removed by a project funded, in whole or in part, by the state unless the review board has granted a certificate of approval.

(b) An application for a certificate of approval:

- (1) must be filed with the division; and
- (2) shall be granted or rejected by the review board after a public hearing.

(c) Subsections (a) and (b) do not apply to real property that is owned by a state educational institution (as defined in IC 20-12-0.5-1).

(d) The commission for higher education and each state educational institution, in cooperation with the division of historic preservation and archeology, shall develop and continually maintain a survey of historic sites and historic structures owned by the state educational institution. Historic sites and historic structures include buildings, structures, outdoor sculpture, designed landscapes, gardens, archeological sites, cemeteries, campus plans, and historic districts. A survey developed under this subsection must conform with the Indiana Historic Sites and Structures Survey Manual.

(e) The state historic preservation officer no later than one (1) year after receipt of a ten (10) year capital plan under IC 14-21-1-18.5 shall:

- (1) review a proposed state college or university project that involves a historic site or historic structure owned by a state educational institution; and
- (2) submit an advisory report to the commission for higher education, the state educational institution, and the general assembly. An advisory report submitted under this subdivision to the general assembly must be in an electronic format under IC 5-14-6.

(f) Not more than thirty (30) days after a state college or university, under section 18.6 of this chapter, submits to the division a description of a proposed project that involves the substantial alteration, demolition, or removal of a historic site or historic structure, the state historic preservation officer shall:

- (1) review the description of the proposed project; and
- (2) submit to the state college or university an advisory report concerning the proposed project.

The state college or university shall review and consider the advisory report before proceeding with the substantial alteration, demolition, or removal of a historic site or historic structure.

As added by P.L.1-1995, SEC.14. Amended by P.L.135-1996, SEC.4; P.L.54-1997, SEC.8; P.L.28-2004, SEC.130.

IC 14-21-1-18.5

State college or university to submit copy of capital plan regarding alteration or demolition of historic sites or structures

Sec. 18.5. When submitting its biennial budget request, a state college or university must:

- (1) submit to the division of historic preservation and archeology of the department of natural resources a copy of any ten (10) year capital plan of the college or university that is required by the budget agency or the commission for higher education; and
- (2) identify the projects included in the capital plan that may involve the alteration or demolition of historic sites or structures.

As added by P.L.135-1996, SEC.5.

IC 14-21-1-18.6

Alteration of historic sites or structures not identified in capital plan; submission of description; publication of notice

Sec. 18.6. (a) As used in this section, "substantial alteration" means a conspicuous, exterior material change in a historic site or historic structure which, in the good faith judgment of a state college or university, affects the historic character of the historic site or historic structure.

(b) If a proposed project of a state college or university:

- (1) involves the substantial alteration, demolition, or removal of a historic site or historic structure; and
- (2) is not identified in a capital plan submitted to the division under section 18.5 of this chapter;

the state college or university shall submit a description of the proposed project to the division and publish a notice describing the project one (1) time in a newspaper of general circulation in the county in which the proposed project is located. The submission of the description and the publication of the notice must be at least thirty (30) days before the commencement of the proposed project.

As added by P.L.54-1997, SEC.9.

IC 14-21-1-19

Director as state historic preservation officer

Sec. 19. The director is designated as the state historic preservation officer.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-20

Review board; establishment; members

Sec. 20. (a) The historic preservation review board is established.

(b) The review board consists of nine (9) members as follows:

- (1) The director.
- (2) At least five (5) individuals meeting minimum professional requirements established by the United States Department of the Interior in 36 CFR, Part 61, as in effect on January 1, 1984.

(3) Professionals in the following disciplines:

(A) History.

(B) Prehistoric or historic archeology.

(C) Architecture or historical architecture.

(c) The division director is a nonvoting advisor to the review board entitled to attend and participate in the proceedings of all meetings of the review board.

(d) The director shall, with the concurrence of the governor, appoint the members of the review board under subsection (b)(2) and (b)(3) for terms of three (3) years. The terms shall be staggered so that the terms of two (2) or three (3) members expire each year. A member may be reappointed.

(e) Appointments to the review board shall be made in accordance with 36 CFR, Part 60, and 36 CFR, Part 61, as in effect on January 1, 1984.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-21

Review board; chairman

Sec. 21. The director is chairman of the review board. The review board may select other officers that the review board determines.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-22

Review board; duties

Sec. 22. (a) The review board shall carry out the duties:

(1) required by this chapter; and

(2) as required under 16 U.S.C. 470 et seq. and the regulations relating to 16 U.S.C. 470 et seq.

(b) The review board shall also advise the division and the department as requested by the director.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-23

Review board; per diem compensation and traveling expenses

Sec. 23. (a) Each member of the review board who is not a state employee is entitled to the minimum salary per diem as provided in IC 4-10-11-2.1(b) for each day that the member is engaged in the official business of the committee. The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the review board who is a state employee is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-24

Applicability of statutes regarding disturbance of grounds

Sec. 24. (a) As used in this section, "agricultural purpose" includes farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry, and poultry husbandry.

(b) Sections 25, 26, 28, and 29 of this chapter do not apply to the following:

- (1) Surface coal mining regulated under IC 14-34.
- (2) Cemeteries and human remains subject to IC 23-14.
- (3) Disturbing the earth for an agricultural purpose.
- (4) Collecting any object other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-25

Adoption of rules regarding standards for plans

Sec. 25. (a) The commission shall adopt rules establishing standards for plans.

(b) With respect to archeological plans, the rules must impose a standard of conduct that does the following:

- (1) Promotes the scientific investigation and conservation of past cultures.
- (2) Considers the interests and expertise of amateur archeologists and professional archeologists.

(c) With respect to development plans, the rules must impose a standard of conduct that preserves and protects both of the following:

- (1) The rights and interests of landowners.
- (2) The sensitivity of human beings for treating human remains with respect and dignity, as determined by the commission.

(d) Plans required under this chapter must be submitted to the department for approval according to rules adopted by the commission.

As added by P.L.1-1995, SEC.14. Amended by P.L.46-2000, SEC.9.

IC 14-21-1-25.5

Notice of discovered burial ground; recommendations

Sec. 25.5. (a) If a Native American Indian burial ground is discovered, the department shall immediately provide notice to the Native American Indian affairs commission established by IC 4-4-31.4.

(b) If Native American Indian human remains are removed from a burial ground, the department shall provide the following to the Native American Indian affairs commission:

- (1) Any written findings or reports that result from the analysis and study of the human remains.
- (2) Written notice to the Native American Indian affairs

commission that the analysis and study of the human remains are complete.

(c) After receiving written notice under subsection (b)(2), the Native American Indian affairs commission shall make recommendations to the department regarding the final disposition of the Native American Indian human remains.

As added by P.L.283-2003, SEC.2.

IC 14-21-1-26

Disturbance of grounds for purpose of discovering artifacts or burial objects

Sec. 26. (a) A person who disturbs the ground for the purpose of discovering artifacts or burial objects must do so in accordance with a plan approved by the department under section 25 of this chapter or under IC 14-3-3.4-14 (before its repeal).

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-26.5

Development plan required for disturbing ground within 100 feet of burial ground

Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

- (1) A public utility (as defined in IC 8-1-2-1(a)).
- (2) A corporation organized under IC 8-1-13.
- (3) A municipally owned utility (as defined in IC 8-1-2-1(h)).
- (4) A surface coal mining and reclamation operation permitted under IC 14-34.

Except as provided in this subsection, subsection (b), and subsection (c), a person may not disturb the ground within one hundred (100) feet of a burial ground or cemetery for the purpose of erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later than sixty (60) days after the development plan is submitted.

(b) A development plan:

- (1) must be approved if a person intends to construct a new structure or alter or repair an existing structure that would significantly impact the burial ground or cemetery; and
- (2) is not required if a person intends to erect, alter, or repair an existing structure for an incidental or existing use that would not impact the burial ground or cemetery.

(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground or cemetery must be approved as follows:

- (1) A development plan of a municipality requires approval of the executive of the municipality and does not require the

approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(d) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

As added by P.L.46-2000, SEC.10. Amended by P.L.177-2001, SEC.3.

IC 14-21-1-27

Duties upon disturbance of buried human remains

Sec. 27. (a) A person who disturbs buried human remains shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance.

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

As added by P.L.1-1995, SEC.14. Amended by P.L.52-1997, SEC.4; P.L.14-2000, SEC.38.

IC 14-21-1-28

Disturbance of buried human remains or grave markers for purpose of discovering artifacts or burial objects

Sec. 28. A person who, with the intent to disturb ground for the purpose of discovering or removing artifacts, burial objects, grave markers, or human remains, disturbs buried human remains or grave markers either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3.4-14 (before its repeal); or
(2) in violation of such a plan;
commits a Class D felony.
As added by P.L.1-1995, SEC.14.

IC 14-21-1-29

Duties upon discovery of artifacts or burial objects

Sec. 29. (a) A person who discovers an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects shall do the following:

- (1) Immediately cease disturbing the ground.
- (2) Notify the department within two (2) business days after the time of the disturbance.

(b) After notification under subsection (a) the department may do any of the following:

- (1) Authorize the person to continue the ground disturbing activity, with or without conditions.
- (2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after thirty (30) days from the date that the department receives notice.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-30

Amateur groups encouraged to establish codes of ethics

Sec. 30. The department shall actively encourage all groups of amateur archeologists to establish and maintain a code of ethics as a minimum guide for the conduct of searches for evidence from the life and culture of past ages.

As added by P.L.1-1995, SEC.14.

IC 14-21-1-31

Adoption of rules

Sec. 31. (a) The commission shall adopt rules under IC 4-22-2 to implement this chapter.

(b) When adopting rules under this chapter the commission shall consider the following:

- (1) The rights and interests of landowners.
- (2) The sensitivity of human beings for treating human remains with respect and dignity.
- (3) The value of history and archeology as a guide to human activity.
- (4) The importance of amateur archeologists in making historical, cultural, and archeological discoveries.
- (5) Applicable laws, standards, and guidelines for the conduct of archeology and codes of ethics for participation in archeology.

As added by P.L.1-1995, SEC.14.